

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

v.

OMAR MUSTAFA,

Defendant.

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CRIMINAL
NO. 98-455-01

Order

AND NOW, this day of June 2002, upon careful review of defendant's motion for modification of his sentence under 18 U.S.C. § 3582(c)(2) (Doc. No. 89), the government's response thereto (Doc. No. 90), the defendant's reply (Doc. No. 92), and both parties' briefs in response to my concern that I did not have jurisdiction (Doc. Nos. 94 and 95),¹

¹ Defendant Omar Mustafa filed a pro se motion to modify his sentence under 18 U.S.C. § 3582(c)(2). He argued that, because his crime of money laundering should be recharacterized as bank fraud, he should be sentenced to a lesser term under the sentencing guidelines. For this proposition he cited Amendment 591 to the Sentencing Guidelines and the Third Circuit case of *U.S. v. Smith*, 186 F.3d 290 (3d Cir. 1990). Doc. No. 89. Although I evaluate Mustafa's arguments more leniently as a pro se plaintiff than had his motion been prepared by more experienced hands, I expressed concern in my previous order that I do not have jurisdiction to hear his case. *Haines v. Kerner*, 404 U.S. 520, 520-21 (1972) (announcing a more lenient standard for pro se motions); *U.S. v. Mustafa*, Crim. No. 98-455-01 (order dated May 8, 2002) [hereinafter *U.S. v. Mustafa* Order, Doc. No. 93]; 18 U.S.C. § 3582(c)(2).

Title 18 U.S.C. § 3582(c)(2) empowers federal judges to "reduce [a defendant's] term of imprisonment" when the applicable sentencing guideline range has been lowered. 18 U.S.C. § 3582(c)(2). As I explained in my previous order, however, Amendment 591 did not lower Mustafa's sentencing range. *U.S. v. Mustafa* Order, Doc. No. 93. Indeed, by disavowing the *Smith* case, the amended guideline actually prevents courts in this circuit in future cases from conducting the type of analysis that Mustafa advocates, effectively *increasing* the amount of time to be served. *Id.* Accordingly, I ordered both parties to brief the issue of whether I had jurisdiction under 18 U.S.C. § 3582(c)(2) to entertain Mustafa's motion. *Id.*

IT IS ORDERED that defendant Omar Mustafa's motion for modification of his sentence is
DISMISSED for lack of jurisdiction.

BY THE COURT:

William H. Yohn, Jr., Judge

Neither party, however, submitted a brief addressing the question I posed. Doc. Nos. 94 and 95. Accordingly, from my own review of the statute and caselaw, I conclude that, because Amendment 591 would not reduce Mustafa's sentence, I do not have jurisdiction to hear the case. Title 18 U.S.C. § 3582(c)(2) is explicit in granting federal courts jurisdiction to hear only cases in which the guideline amendment reduces the term of imprisonment. 18 U.S.C. § 3582(c)(2). The caselaw also supports this obvious reading of the statute. *See, e.g., U.S. v. Tally*, 920 F. Supp. 597 (M.D. Pa. 1996) (holding that 18 U.S.C. § 3582(c)(2) did not apply to a case in which a defendant sentenced to 51 months of incarceration moved for a modification of his sentence that would have extended his sentence to between 63 and 78 months of incarceration); *see also generally U.S. v. Townsend*, 98 F.3d 510 (9th Cir. 1996) (holding that a federal court may not employ 18 U.S.C. § 3582(c)(2) where a prisoner sentenced to 20 years before a change in the guidelines would still receive a sentence of 20 years after the change in the guidelines).

For the reasons above, I find that I do not have jurisdiction under 18 U.S.C. § 3582(c)(2) to hear Mustafa's motion to modify his sentence, and therefore dismiss the motion.